

PCT

To:

see form PCT/ISA220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/004833

International filing date (day/month/year)
06.05.2004

Priority date (day/month/year)
06.05.2003

International Patent Classification (IPC) or both national classification and IPC
A23G1/20, A23G3/02, A23G3/12, A23G1/00

Applicant
NESTEC S.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA220.

3. For further details, see notes to Form PCT/ISA220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Gaiser, M

Telephone No. +49 89 2399-2383



WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

10/555725
International application No.
PCT/EP2004/004833

JC20 Rec'd PCT/PTO 07 NOV 2009

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. ☐ It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

4. Additional observations, if necessary:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 20-31

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 20-31 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
☐ no international search report has been established for the whole application or for said claims Nos.
☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
- | | |
|----------------------------|--|
| the written form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
| the computer readable form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
☐ See separate sheet for further details

Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has:
- ☒ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☐ not paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- ☐ complied with
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☒ all parts.
 - ☐ the parts relating to claims Nos.

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|------|
| Novelty (N) | Yes: Claims | 1-19 |
| | No: Claims | |
| Inventive step (IS) | Yes: Claims | 1-19 |
| | No: Claims | |
| Industrial applicability (IA) | Yes: Claims | 1-19 |
| | No: Claims | |

2. Citations and explanations

see separate sheet

JC20 Rec'd PCT/PTO 07 NOV 2005

Re Item III**Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

- a.) Claim 20 defines an apparatus, which is characterised in that it comprises die means arranged for producing a strand of a fat-based product having a specified area-to-mass ratio. Since said area-to-mass ratio is, above all, a function of the mass to be extruded, it is not considered being an appropriate technical feature of an apparatus as defined in claim 20. Therefore, the subject-matter of claim 20 is not clear in the sense of Article 6 PCT.
- b.) Claims 21-31 define preferred embodiments of the apparatus defined in claim 20, and thus relate to unclear subject-matter, too (Article 6 PCT).

Re Item IV**Lack of unity of invention**

The separate inventions/groups of inventions are:

1-19

a fat based product forming a continuous strand of a plurality of curls

15-31

On demand delivery of an extruded confectionery product

They are not so linked as to form a single general inventive concept (Rule 13.1 PCT) for the following reasons:

In the present application the above groups of inventions are not linked by one special technical feature, since the specified surface area to mass ratio specified in any of the independent claims 1, 15 and 20 can already be derived from e.g. D1=EP0603467. While claim 15 comprises technical features of both of the two other independent claims, and thus belongs to all groups of inventions, claims 1 and 20 do not have any special technical features in common. Therefore, no unity exists between claims 1 and 20 (Rule 13 PCT).

Re Item V.

- 1 The following documents are referred to in this communication:
D1 : EP 0 603 467 A (NESTLE SA) 29 June 1994 (1994-06-29)
D2 : EP 0 366 978 A (SCHOELLER LEBENSMITTEL) 9 May 1990 (1990-05-09)
- 2 Document D1, which is considered to represent the most relevant state of the art, discloses a method for extruding chocolate, by which a product is obtained, that provides temporary flexibility, and which can be handles in its plastic state, and which product is disclosed being in the form of filaments. (see p.2, line 35 - p. 3, l. 50). From this, the subject-matter of independent claims 1 and 15 differs in that the product of claim 1 is defined being randomly curled, while the method of claim 15, in addition to providing a curled product, is foreseen to be established in retail outlets.
 - 2.1 The subject-matter of claim 1 is therefore novel (Article 33(2) PCT)
The problem to be solved by the present invention may be regarded as providing a curled fat based product, providing a temporary flexibility.
 - 2.2 The solution to this problem proposed in claims 1 and 15 of the present application is considered as involving an inventive step (Article 33(3) PCT) since D1 does not hint at extruding curled products. D2, being concerned with layering ice cream in curls, while the ice cream is still in its flexible state, does not provide sufficient information on the surface area-to-mass ratio of the ice cream, and thus does not give any incentive to be combined with D1, in order to solve the above problem. Furthermore, ice cream products such as the ones known from D2 are not regarded as being capable of being physically handles while exhibiting their temporary flexibility.
 - 2.3 Claims 2-14, and 16-19 are dependent on claims 1 and 15, respectively, and as such also meet the requirements of the PCT with respect to novelty and inventive step.